

REMARKS

As of the date of the rejection, the present application contains claims 21 – 27. Independent claim 21 is amended in this paper. Accordingly, each of claims 21 – 27 remains pending in this application.

The Examiner has rejected claims 21 – 28 under 35 U.S.C. 112, first paragraph. Applicant has amended claim 1, so that the rejected objectionable limitation no longer appears in the claim. Support for such a limitation can be found on page 11, paragraph 4 of the application as filed.

On page 4 of the Office Action, the Examiner rejected claims 21 – 27 under 35 U.S.C. 103(a) as being unpatentable over Hobson (U.S. Pat. No. 4,259,994) in view of Carpenter (U.S. Pat. No. 5,983,952).

The Examiner states that the cropped yarns would inherently bloom to some degree due to the release of internal tension in the yarns. However, the release of such tension is not blooming, as is known in the art. Blooming is an operation in the processing that substantially increases the bulk of the tow by separating the filaments and deregistering the crimp. Blooming is not inherent to cropped yarns. In order for a feature to be inherent in the invention, Federal Circuit decisions consistently emphasize that an anticipatory inherent feature or result must be consistent, necessary, and inevitable, not merely possible or probable. See *Trintec Industries, Inc. v. Top-U.S.A Corp.*, 295 F.3d 1292, 1297, 63 USPQ2d 1597, stating that “inherent anticipation requires that the missing descriptive material is necessarily present, not merely probably or possibly present, in the prior art.” See also: *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51; *Mentor H/S, Inc. v. Medical Device Alliance, Inc.*, 244 F.3d 1365, 1376, 58 USPQ2d 1321; and *Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991). If blooming is inherent to the fibers, the Examiner should have no problem finding a reference that teaches this limitation. However, as the

rejection currently stands, the Examiner has not made a *prima facie* case as required by *Graham v John Deere*.

In an effort to expedite the examination of the application, the Applicant has nonetheless amended claim 21 so that the blooming of the fibers is accomplished by “chemical, heat, or mechanical treatment.” Support for such a limitation can be found on page 11, paragraph 4 of the application as filed. Thus, any inherent blooming which the Examiner claims is present in the fibers of Hobson and Carpenter would no longer obviate the amended claims.

The Examiner also states that it would have been obvious to one of ordinary skill in the art at the time the invention was made to choose the claimed pile height in order to produce a pile height with the least amount of waste, as well as a luxurious, thick pile that is appealing to consumers. Pile height and shearing are not directly related. Therefore, it would appear that the Examiner is actually stating that shearing one side of the towel to 75 to 95% of the height of the other side of the towel would be obvious in light of the cited references and stated motivation.

Pile height variations are influenced by changing the direction from the front face to the back of the fabric in order to produce a design. A plain terry structure with a printed warp pattern is more even in pile height and less waste results in cropping. See Hobson column 2 lines 43 though 47. Because of this, Hobson teaches that the pattern should be dyed onto the yarns prior to weaving. Therefore, a reversal in weaving direction is not required. In contrast, Applicant’s weaving requires a reversal in the weaving direction in order to create the different colored border around the center section. Therefore, if one of skill in the art produces an article seeking to minimize waste from pile height shearing according to Hobson, he must weave the article in a single direction. This necessarily would result in an article that does not have a woven border as claimed by the Applicant around its edge. Thus, if one were to follow Hobson’s teaching on this, it would actually *teach away from* the current invention, which requires a woven border.

On page 5 of the Office Action, the Examiner rejects claims 21 – 27 under 35 U.S.C. 103(a) as being unpatentable over Sherrill et al in view of Applicant’s Admission.

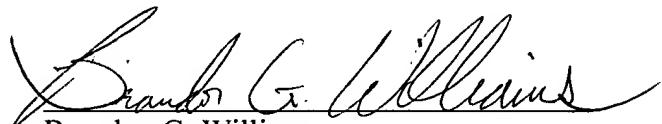
U.S. Pat. No. 3,721,273 issued to Sherrill et al. discloses a woven terry towel having one face of cotton terry pile, and an opposite face of a sheared and bloomed rayon terry pile. A pattern can be printed on the rayon terry pile that results in a pattern of increased brilliance. In figure 1, the woven terry towel is shown with a border section with printed design elements thereon, and a center section with a printed design element thereon. However, the border section is created by printing a specific pattern on the woven article. The current invention creates a border section by weaving threads of two separate colors.

The ‘273 patent discloses that one side is sheared and bloomed rayon, and the other side is a cotton pile. While in theory the rayon and cotton fibers could be two separate colors, this is not disclosed. If the ‘273 towel did utilize different colored fibers in the weaving, it would result in a rayon side of one color, and a cotton side of a separate color. No woven center portion or woven edge portion is disclosed as claimed by the Applicant.

The color scheme claimed in the current invention is critical to the achievements therein, and is not related solely to ornamentation as suggested by the Examiner. By weaving a towel with a first color center surrounded by a border of a second color, with the opposite side of the towel having a reversed configuration, the printer can apply much more vibrant graphics to the center portion of the towel. Because the center portion on the reverse side is of a different color, the center portion of the reverse side is able to mask any bleed through that may occur. Similarly, the edge portions of the first side are woven a different color from that of the center portion. Printed graphics therefore do not have to be as precisely aligned within the center portion, since overlap onto the edge can be masked by the second color of the edge portion. Sherrill et al. do not disclose this weaving pattern, which is essential to the achievement of the current invention.

In view of the above remarks and the amendment to independent claim 21, it is submitted that the present application places the claims in condition for allowance and such is earnestly solicited.

Respectfully submitted,



Brandon G. Williams
Attorney for Applicant
Registration No. 48,844
DOUGHERTY, CLEMENTS & HOFER
1901 Roxborough Road, Suite 300
Charlotte, North Carolina 28211
Telephone: (704) 366-6642
Facsimile: (704) 366-9744

BGW/nb
Attorney Docket 3129